



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR PART 93

[Docket No. FAA-2020-0862]

### **COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement for all international operations.

**SUMMARY:** The FAA proposes to extend through March 26, 2022, the Coronavirus (COVID-19)-related limited, conditional waiver of the minimum slot usage requirement at John F.

Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through October 30, 2021, for all international operations. Similarly, the FAA proposes to extend through March 26, 2022, its COVID-19-related limited, conditional policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, for all international operations. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). This relief would be limited to slots and approved operating times used by any carrier for international operations only, through March 26, 2022, and would be subject to the same terms and conditions, with minor modifications, that the FAA has already applied to the relief that remains available through October 30, 2021. This notice invites stakeholders to submit comments with detailed supporting information relevant to

FAA making a final decision. The FAA anticipates subsequently providing notice of its final decision.

**DATES:** Submit comments on or before [INSERT DATE 5 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit written views and supporting data by email to the Slot Administration Office at 9-FAA-Slot-Policy@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Al Meilus, Manager, Slot Administration, AJR-G, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-2822; e-mail Al.Meilus@faa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements<sup>1</sup> to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA)<sup>2</sup> and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the COVID-19 pandemic.<sup>3</sup> Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on three occasions subject to certain substantive changes, including the addition of conditions, as the COVID-19 situation continued to evolve.<sup>4</sup> The most recent limited, conditional extension of COVID-19

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<sup>1</sup> The FAA has authority for developing “plans and policy for the use of the navigable airspace” and for assigning “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

<sup>2</sup> Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), the October 7, 2020, notice (85 FR 63335), and this policy statement, extends to all allocated slots, including slots allocated by exemption.

<sup>3</sup> Notice of Limited Waiver of the Slot Usage Requirement, 85 Fed. Reg. 15,018 (Mar. 16, 2020).

<sup>4</sup> Notice of Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 Fed. Reg. 21,500 (Apr. 17, 2020); Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 Fed. Reg. 63,335 (Oct. 7, 2020);

related relief was issued by the FAA on January 13, 2021, and is due to expire on October 31, 2021.<sup>5</sup>

### **Current COVID-19 Situation**

Since the FAA's January 13, 2021, policy statement granting a limited, conditional extension of COVID-19-related relief at slot-controlled airports and IATA Level 2 airports in the United States, COVID-19 has continued to cause disruption globally and the timeline for recovery from this global pandemic remains uncertain. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide.<sup>6</sup> For the week ending September 12, 2021, the WHO reported nearly 4 million new COVID-19 cases and just over 62,000 new deaths, bringing the cumulative total to more than 224 million reported COVID-19 cases and more than 4.6 million deaths globally since the start of the COVID-19 pandemic.<sup>7</sup>

The WHO reports that it is monitoring multiple variants globally; currently the WHO has classified four different variants as "variants of concern" and five different variants as "variants of interest."<sup>8</sup> The Center for Disease Control (CDC) is monitoring four variants of COVID-19 in the United States.<sup>9</sup> These variants include: the B.1.1.7 (Alpha), B.1.351 (Beta), P.1 (Gamma), and B.1.617.2 (Delta).<sup>10</sup> The CDC has stated that these variants of concern – including the current dominant Delta variant – spread more easily and quickly. However, the CDC reports that

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and FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

<sup>5</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

<sup>6</sup> <https://covid19.who.int/table>

<sup>7</sup> COVID-19 weekly epidemiological update, September 14, 2021, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> *See also* <https://covid19.who.int/> for WHO COVID-19 Dashboard with the most current number of cases reported.

<sup>8</sup> <https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/>

<sup>9</sup> Center for Disease Control (CDC), About Variants of the Virus that Causes COVID-19, available at: <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>

<sup>10</sup> *Id.*

so far, studies suggest that the current Food and Drug Administration (FDA)-approved or authorized vaccines do work against the circulating variants.<sup>11</sup>

On January 21, 2021, President Biden announced the National Strategy for the COVID-19 Response and Pandemic Preparedness, a national strategy to beat the COVID-19 pandemic.<sup>12</sup> The strategy is a comprehensive plan that starts with restoring public trust and mounting an aggressive, safe, and effective vaccination campaign while continuing with the steps that stop the spread like expanded masking, testing, and social distancing. On September 9, 2021, President Biden announced a six-pronged approach to expand vaccinations, provide booster shots, keep schools safely open, increase testing and masking, protect the economic recovery, and improve care for those with COVID-19.<sup>13</sup>

Currently three COVID-19 vaccines have been authorized for emergency use or approved by the FDA.<sup>14</sup> As of September 13, 2021, 53.9% of Americans are fully vaccinated and 63.2% of Americans have received at least one dose.<sup>15</sup> Increased rates of vaccination in the U.S., along with other measures to stop the spread have resulted in an overall decline of the U.S. COVID-19 infection rate since the previous COVID-19 waiver proceeding. However, cases increased again following the U.S. reaching its lowest rates of infection experienced since the week of March 16, 2020 (79,358 confirmed new cases for the week of June 14 reflected the lowest rate of infection since the week of March, 16, 2020).<sup>16</sup> When the FDA extended COVID-19-related relief on January 13, 2021, the number of confirmed cases of COVID-19 in the U.S. for the week of

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<sup>11</sup> *Id.* See also <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html>

<sup>12</sup> <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>

<sup>13</sup> President Biden's COVID-19 Plan | The White House

<sup>14</sup> <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

<sup>15</sup> CDC, COVID-19 Vaccinations in the United States, updated September 13, 2021, available at: <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

<sup>16</sup> <https://covid19.who.int/region/amro/country/us>

January 11, 2021, based on WHO data, was 1,580,016.<sup>17</sup> For the week ending September 12, 2021, which is the most recent week for which data is available, the WHO reports 1,034,836 confirmed cases in the United States.<sup>18</sup>

The U.S. is attempting to distribute vaccines globally to help vaccination numbers improve.<sup>19</sup> On August 18, 2021, President Biden announced that in the months of June and July the United States had donated 100 million doses and that in the coming months of fall and early winter another 100 million boosters and 200 million additional doses will be donated to other countries.<sup>20</sup>

The President has placed a suspension and limitation on entry into the United States for non-U.S. citizens or permanent residents who have been present in, several foreign countries within the preceding 14 days.<sup>21</sup> International travel advisories issued by the U.S. Department of State's Global Health Advisory remain in effect worldwide, including designations ranging from Level 1 – Exercise Normal Precautions to Level 4—Do Not Travel for more than 200 destinations.<sup>22</sup> A majority of countries are designated either Level 3 or Level 4 – where COVID-19 numbers are classified as high and very high, respectively.<sup>23</sup> The U.S. Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State has noted

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<sup>17</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season. (Docket No. FAA-2020-0862-0302). *See also* <https://covid19.who.int/region/amro/country/us>

<sup>18</sup> COVID-19 weekly epidemiological update, September 14, 2021, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> *See also* <https://covid19.who.int/region/amro/country/us>

<sup>19</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/statement-by-president-joe-biden-on-global-vaccine-distribution/>

<sup>20</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/18/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-2/>

<sup>21</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/>

<sup>22</sup> <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>

<sup>23</sup> <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html#travel-4>

further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk. Accordingly, the U.S. Department of State has warned Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States. The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that State, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival.<sup>24</sup>

### **Standard Applicable to This Waiver Proceeding**

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision granting relief due to COVID-19 impacts.<sup>25</sup> At JFK and LGA, each slot must be used at least 80 percent of the time.<sup>26</sup> Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.<sup>27</sup>

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.<sup>28</sup> The FAA may waive this minimum usage requirement in the

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<sup>24</sup> <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>

<sup>25</sup> See 85 FR 15018 (Mar. 16, 2020).

<sup>26</sup> Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

<sup>27</sup> At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. See JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. See LGA Order, 85 FR at 58257.

<sup>28</sup> See 14 CFR 93.227(a).

event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.<sup>29</sup>

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

### **Summary of Petitions from Stakeholders Concerning Continued COVID-19 Relief**

The FAA has received nine petitions regarding COVID-19-related relief for the Winter 2021/2022 season to date. Five petitioners, including the International Air Transport Association (IATA), Avianca Airlines, All Nippon Airways (ANA), Lufthansa Group, and Airlines for America (A4A)<sup>30</sup> seek further relief through the end of the Winter 2021/2022 scheduling season due to ongoing COVID-19 impacts on demand for air travel. These petitioners emphasize the critical importance of an expedient decision to provide the industry with stability and certainty during the ongoing COVID-19 pandemic. Three petitioners, including JetBlue Airways (JetBlue), Southwest Airlines Co. (Southwest), and Airports Council International-North America (ACI-NA), oppose further extension of the limited, conditional relief FAA has made available through October 30, 2021. ACI-NA and JetBlue oppose any further relief due to COVID-19; however, JetBlue recognizes the potential need for relief for international operations and urges FAA to adopt a case-by-case approach to evaluating petitions for relief. Southwest specifically opposes any further relief at U.S. domestic airports, DCA and LGA. One petitioner submitted a petition marked privileged and confidential.

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<sup>29</sup> See 14 CFR 93.227(j).

<sup>30</sup> All petitions and other submissions related to COVID-19 relief beyond the Summer 2021 season received by the FAA, with exception of one petition which was marked privileged and confidential, have been included in the docket for this proceeding. The FAA notes that two submissions were received from IATA, dated June 4 and June 25, 2021, respectively.

IATA, Avianca, ANA, and Lufthansa Group support continued relief for international operations at U.S. slot-controlled and IATA Level 2 airports and would prefer the FAA adopt the Worldwide Airport Slot Board's (WASB) slot relief package.<sup>31</sup> The FAA has previously described the provisions of the WASB slot relief package and explained how the provisions would be applied in the United States, if adopted, in a notice of proposed extension of a limited, conditional waiver of minimum slot usage requirement beyond March 27, 2021, which was published in the Federal Register on December 22, 2020 (85 FR 83672). The WASB slot relief package remains unchanged from the prior slot relief proceeding.

IATA believes “the situation remains critically desperate and recovery slow” highlighting the “uncertainty around the need for booster vaccinations this fall, the impact of variants and government management of restrictions related to these outbreaks, lack of significant corporate demand until at least 2022, significant new outbreaks in Asia and Latin American and the related government retraction from reopening, as well as the disparity between countries approaches to managing the risk” as justification for continued slot relief for international operations. IATA states that flexibility from continued slot usage relief “enables airlines to focus flying where there is demand and not purely to satisfy slot use rules” and that “worsening the competitive position of U.S. aviation as it emerges from the crisis only serves to jeopardize more jobs and further risks U.S. international connectivity.”

A4A supports a waiver of minimum slot usage requirements for international operations at U.S. slot-controlled airports and IATA Level 2 airports. A4A believes a waiver of minimum slot usage requirements for international operations is needed because “international demand remains repressed and to ensure a level playing field.” A4A states that international operations “remain significantly deterred as a result of COVID-19 and direct government actions.” Further A4A highlights that “many countries have included reciprocity requirements previously and will

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<sup>31</sup> A summary of the WASB proposal for Winter 2021/2022 was included in an annex to IATA's June 4, 2021 petition, which has been placed in the docket for this proceeding.



likely wait until the U.S. acts before providing relief to ensure foreign carrier access to slots and gates in the U.S. when they resume operations.” A4A asserts, “without reciprocity U.S. carriers will lose slots in key international markets and be put at a significant competitive disadvantage relative to foreign competitors.”

JetBlue and ACI-NA oppose continued slot usage relief and support a return to usual 80/20 minimum slot usage requirements. ACI-NA believes that “the U.S. is turning the corner in our battle against Coronavirus” and that “there are beginning to be opportunities for international travel.” ACI-NA states that ending slot usage waivers “will allow affected airports to begin piecing together their future air services portfolios that enable airports to drive sustainable economic growth for the communities they serve.” Likewise, JetBlue believes that “demand has returned and is growing and the U.S. airline industry will not be able to recover with full haste if competition-altering slot waivers continue without restriction.” In addition, JetBlue believes that international flying levels may never return and broad waivers discourage the repurposing of slots previously used for international service. However, JetBlue states that it “appreciates the complexities in international markets that were raised in the IATA letter” and urges that “DOT/FAA enable a case-by-case evaluation for limited exemptions based on extreme circumstances such as border closure or conditions of entry that represent de facto border closure.”

Southwest opposes continued slot usage relief at domestic-focused airports. Southwest specifically requests that the FAA “reject any further requests for waivers of slot usage requirements for DCA and LGA, considering a) the resurgence in the demand for domestic airline travel since March 2021, and b) that DCA and LGA have perimeter restrictions that ensures the vast majority of flights from these airports are domestic.” In addition, Southwest states, “reopening these two predominately domestic airports would reflect the reality that domestic traffic is far more robust than international markets.” Further, Southwest requests the

FAA reduce barriers to competition at DCA and LGA and believes returning to normal slot usage requirements will “clear the way for such competition to resume.”

## **Discussion of Proposal**

### *Continued Relief for International Operations through March 26, 2022*

In consideration of the foregoing information, the petitions that the FAA has received, and the evolving and highly unpredictable situation globally with respect to ongoing impacts from COVID-19 at the current moment, the FAA proposes to extend, for all international operations, the current limited, conditional relief that FAA has already made available through October 30, 2021, through the end of the Winter 2021/2022 season on March 26, 2022.<sup>32</sup> This relief would be limited to slots and approved operating times used by carriers for international operations, through March 26, 2022, and would be subject to the same terms and conditions, with minor modifications, that the FAA has applied to the relief already made available through October 30, 2021, which the FAA reiterates in this notice. International operations, for purpose of this notice, are flights intended for operation between one of the U.S. slot-controlled or IATA Level 2 airports and any point in a foreign jurisdiction.

It is not the policy of the Department of Transportation (DOT) to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. Instead, it is the policy of the Department to encourage high utilization of scarce public infrastructure. Under the established standard, slot usage waivers are generally used to address short-term, unpredictable shocks to demand or capacity that are beyond carriers’ control. After 19 months of experience, the DOT believes it is becoming apparent that COVID-19 is causing structural and operational changes to the airline industry; the industry is adapting; and the issuance of waivers should not hinder that adaptation. As previously stated, at some point in time, repeated waivers to preserve pre-COVID slot holdings will impede the ability of airports

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<sup>32</sup> The FAA notes that for purposes of the relief proposed in this proceeding, Canadian carriers would be treated as foreign carriers.

and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets. Therefore, the FAA emphasizes that operators should not assume further relief on the basis of COVID-19 will be forthcoming beyond the end of the Winter 2021/22 scheduling season.

IATA reports that international flights globally are operating around 88% below 2019 levels, with only slight recovery in international traffic forecast by the end of 2021 to about 66% below 2019 levels. As indicated by IATA, “[t]he situation remains critically desperate and recovery slow with low advance bookings and many more last-minute bookings (and cancellations) on most routes projected for the foreseeable future. Uncertainty around the need for booster vaccinations this fall, the impact of variants and government management of restrictions related to these outbreaks, lack of significant corporate demand until at least 2022, significant new outbreaks in Asia and Latin America and the related government retraction from reopening, as well as the disparity between countries approaches to managing the risk justifies continued slot relief at this time. Without any stability and planning still at a 6-8 week horizon, airlines will continue to need maximum flexibility.”

FAA agrees with these petitioners and believes, based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of international travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, that extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes that extending the limited, conditional slot usage waiver, for international operations only, through the Winter 2021/2022 season would provide carriers with flexibility to operate in the unpredictable international market and would support long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

The FAA recognizes that domestic carriers have a mix of both domestic and international operations and therefore the agency intends to make this relief available for international

operations that would have been operated in the Winter 2021/2022 season, but for COVID-19 impacts. In other words, the FAA intends to provide this conditional relief to domestic carriers on a scale that is comparable to each carrier's pre-COVID level of international service. The FAA would generally evaluate any request for relief from U.S. carriers for the Winter 2021/2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules. Domestic carriers seeking relief for a particular operation under the waiver will need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates this notice to demonstrate intent to use a slot or approved operating time for an international destination. The FAA would not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Winter 2021/2022 season, if the information is dated after this notice is issued.

International operations eligible for a waiver under this proposal would be subject to all of the same conditions and policies, with minor modifications, described in FAA's January 13, 2021 policy statement, which remains in effect at slot-controlled and IATA Level 2 airports in the United States for the Summer 2021 season.<sup>33</sup> The FAA believes the conditions associated with the relief provided to date are generally comparable to the WASB package and remain necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential to suppress flight operations for which demand exists. The conditions for relief at slot-controlled airports, which the FAA would apply to the relief proposed in this notice, include:

(1) all slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots

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<sup>33</sup> FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season. (Docket No. FAA-2020-0862-0302).

on an *ad hoc* basis without historic precedence. Compliance with this condition is required for operations scheduled from October 31, 2021 through the duration of this relief; therefore, carriers should begin notifying the FAA of Winter returns by October 4, 2021. Slots operated as approved on a non-historic basis in Winter 2021/2022 will be given priority over new demands for the same timings in the next equivalent season (Winter 2022/23) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States.<sup>34,35</sup> Foreign carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature.

(2) the waiver does not apply to slots newly allocated for initial use during the Winter 2021/2022 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable); and,

(3) the waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) since October 15, 2020, for the duration of the transfer.<sup>36</sup> Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

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<sup>34</sup> Consistent with the FAA's final policy statement issued January 13, 2021, this priority would apply to slot or schedule requests for Winter 2022/2023, which are comparable in timing, frequency, and duration to the non-historic *ad hoc* approvals made by the FAA for Winter 2021/2022. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which meet the conditions of the waiver during Winter 2021/2022 and seek to resume operating in Winter 2022/2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

<sup>35</sup> Although the FAA is proposing to extend the four-week rolling return policy consistent with the Summer 2021 waiver, any carrier returning full-season slots or schedule approvals at an airport outside the United States and associated with a route to the United States will generally be expected to similarly return the complementary full-season U.S. slot or schedule approval to the FAA for re-allocation on a non-historic or *ad hoc* basis.

<sup>36</sup> As previously explained, the FAA has determined not to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy will remain in effect continuously from the initial effective date of October 16, 2020.

In addition, as proposed, an exception may be granted to these conditions based on any government restriction that prevents or severely restricts international travel to specific airports, destinations (including intermediate points) or countries for which the slot was held. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate that the ability to operate a particular flight or comply with the conditions of the proposed waiver is prevented or severely restricted due to an unpredictable official governmental action related to COVID-19. This proposed exception includes minor modifications compared to the exception currently in effect for the Summer 2021 season.<sup>37</sup> The FAA seeks to provide greater flexibility in allowing exceptions under certain circumstances based on issues that have arisen in the course of implementing the relief currently available. Official government actions that may qualify for this exception, include—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID-19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas.
- Government restrictions related to COVID-19 on the maximum number of arriving or departing flights and/or the number of passengers on a specific flight or through a specific airport.
- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located.
- Government-imposed closure of businesses essential to support aviation activities (*e.g.*, closure of hotels, ground handling suppliers, etc.).
- Governmental restrictions on airline crew, including unreasonable entry requirements or unreasonable testing and/or quarantine measures.

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<sup>37</sup> See FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302).

This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). The extraordinary circumstances exception in this slot usage relief would only apply within the scope of the relief otherwise provided by the waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief for domestic operations.

The conditions for COVID-19-related relief for prioritizing flights canceled at IATA Level 2 airports, for purposes of establishing a carrier's operational baseline in the next corresponding season, which the FAA would apply to the relief proposed in this notice include:

(1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without historic precedence. Schedules operated as approved on an *ad hoc* basis in Winter 2021/2022 will be given priority over new demands for the same timings in the next equivalent season (Winter 2022/2023) for use on an *ad hoc* basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign carriers seeking priority under this provision would be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature; and,

(2) The priority for FAA schedules approved for Winter 2021/2022 does not apply to net-newly approved operations for initial use during the Winter 2021/2022 season. New approved times will remain eligible for priority consideration in Winter 2022/2023 if actually operated in Winter 2021/2022 according to established processes.

Consistent with the proposal for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances due to any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the slot was held, as discussed previously with respect to slot-controlled airports. If the exception is

determined not to apply, carriers are expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. The extraordinary circumstances exception in this slot usage relief would only apply within the scope of the relief otherwise provided by the waiver, carriers should not expect to rely on the extraordinary circumstances exception for relief related to domestic operations.

The FAA believes an extension of relief for all international operations, through March 26, 2022, is reasonable due to fluctuating travel restrictions and ongoing economic and health impacts of COVID-19 internationally. The proposed relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.<sup>38</sup> Continuing relief for this additional period is reasonable to mitigate the impacts on passenger demand for international air travel resulting from the spread of COVID-19 worldwide.

As of the date of issuance of this notice, U.S. domestic air travel demand and vaccination rates have reached a level that the FAA believes no longer necessarily justifies COVID-19-related slot usage relief domestically. However, COVID-19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. Indeed, foreign carriers in many parts of the world are prevented from operating to the United States due to governmental restrictions resulting from COVID-19. The continuing impacts of COVID-19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally. The ultimate duration and severity of COVID-19 impacts on passenger demand for international air travel remains unclear. Even after the pandemic is contained, impacts on passenger demand for international air travel are likely to continue for some time.

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<sup>38</sup> The FAA is responsible to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at LGA and JFK. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).



If the FAA extends relief for international operations through March 26, 2022, as proposed, the FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

### **Invitation for Comment and Submission of Supporting Information**

The FAA seeks views and information regarding this proposal. Interested persons are invited to submit comments and supporting information to demonstrate why the FAA should or should not finalize this decision, and to submit any information relevant to making this decision. The FAA has received multiple formal petitions advocating on behalf of U.S. carriers that seek continued relief for international operations. However, the FAA has not received formal, individualized requests from U.S. carriers explaining the need for continued relief for international operations despite the early signs of recovery of air travel demand in the United States and certain parts of the world and the potential for U.S. carriers to utilize slots for operations on alternative routes – domestic or international. In particular, U.S. carriers are invited to provide individualized responses to the following—

- What is the basis with supporting rationale under which a U.S. carrier may necessitate continued relief for international operations in light of increasing demand for air travel domestically and for some international destinations? To what extent do carriers anticipate being unable to meet minimum slot usage requirements and/or operate consistent with approvals at Level 2 airports?
- What is the particularized relief requested for the Winter 2021/2022 season? In other words, each U.S. carrier seeking relief for international operations this Winter is invited to provide a detailed accounting of which operations in its

portfolio have historically been used for international service versus domestic as well as any differences for the upcoming Winter 2021/2022 season, with an explanation regarding what extent (such, as percentage) of the carriers' international portfolio cannot be repurposed for alternate operations?

- What sources of information, other than historic published schedules, would U.S. carriers make available to FAA to demonstrate intent to use specific slots or approved timing for international operations versus domestic?
- To what extent have U.S. carriers relied upon the relief provided for the Summer 2021 season for international operations?

Information submitted to the FAA may be subject to disclosure under the Freedom of Information Act. The FAA recognizes that commenters may seek to submit business information that is both customarily and actually treated as confidential. Persons that submit such confidential business information should clearly mark the information as "PROPIN". The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

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